

Federal Communications Commission

FCC 93-85

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-227

In the Matter and Applications of

NEWSOUTH File Nos. BTCCT-900305LD
BROADCASTING, INC. BTCCT-910308KE
WFXL(TV), Albany, Georgia

Order to Show Cause Why the
License of WFXL(TV) Should Not Be
Revoked; Application for Transfer
of Control to NewSouth
Broadcasting, Inc., Debtor-in-
Possession

TIMOTHY S. BRUMLIK File Nos. BLTVL-891107JE
Permittee of Low Power BAPTVL-900105IA
Television Station W07BZ, BAPTVL-910607IB
Orlando, Florida

Order to Show Cause Why the
Permit of W07BZ Should Not Be
Revoked; Application for
License to Cover Construction
Permit; Application for
Assignment of Construction
Permit to Robert Sandusky;
and Application for Assignment
of Construction Permit to
Timothy S. Brumlik,
Debtor-in-Possession

NEWSOUTH MEDIA File Nos. BMPTVL-900129IA
CORPORATION BAPTVL-900105IC
Permittee of Low Power
Television Station W12CD,
Altamonte Springs, Florida

Order to Show Cause Why the
Permit of W12CD Should Not Be
Revoked; Application for
Modification of Construction
Permit; and Application for
Assignment of Construction
Permit to Televista, Inc.

NEWSOUTH File Nos. BMPTVL-900125IA
BROADCASTING, INC. BMPTVL-891208R4
Permittee of Low Power BLTVL-900125IB
Television Station W13B0, BAPTVL-900703IE
Valdosta, Georgia

Order to Show Cause Why the
Permit of W13B0 Should Not Be
Revoked; Application to
Replace Expired Construction
Permit; Application for
Modification of Construction
Permit; and Application for
Assignment of Construction
Permit to General Management
Consultants, Inc.

TIMOTHY S. BRUMLIK File Nos. BAPTVL-900105IB
Permittee of Low Power BMPTVL-910301JG
Television Station W12CC, BAPTVL-910607IC
Cocoa, Florida

Order to Show Cause Why the
Permit of W12CC Should Not Be
Revoked; Application for
Assignment of Construction
Permit to Robert Sandusky;
Application for Extension of
Construction Permit and
Application for Assignment of
Construction Permit to
Timothy S. Brumlik
Debtor-in-Possession

NEWSOUTH File No. BPTVL-870702TX
BROADCASTING, INC.
Lumber City, Georgia

For a Construction Permit
for a New Low Power
Television Station

ORDER

Adopted: February 10, 1993; Released: February 25, 1993

By the Commission: Commissioner Marshall not partici-
pating.

1. Before the Commission are a Petition for Extraor-
dinary Relief and a Request for Contingent Dismissal of
Applications, both filed January 15, 1992, by Timothy S.
Brumlik, NewSouth Broadcasting, Inc. (NBI) and

NewSouth Media Corporation (NMC),¹ and related pleadings.² Brumlik and NBI filed petitions for bankruptcy protection in the United States Bankruptcy Court. Brumlik and the NewSouth Companies request Commission approval of applications for the assignment of the license for Station WFXL(TV) and the permits for the four Low Power Television Stations to Michael A. Cantu, the general manager and 3 percent owner of NBI, under the auspices of the Bankruptcy Court so that the proceeds can be used for the benefit of innocent creditors.

2. Brumlik was convicted of violating Title 18 U.S.C. § 1956(a)(3)(B) (laundering money), and issues were designated to determine if he is qualified to be or remain a Commission licensee. The Commission's general policy is that, when character qualifications issues have been designated against a licensee in a renewal or revocation hearing, the licensee cannot assign the license until it is found qualified to be a Commission licensee or one of the exceptions to that policy is found to be applicable. In *Second Thursday Corp.*, 22 FCC 2d 515, 516, *recon. granted*, 25 FCC 2d 112 (1970), the Commission established an exception to that policy asserting that it would approve the assignment of a license if "the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefit from favorable action on the application or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors." As noted by the Bureau, the *Second Thursday* policy is applicable by its terms only where a licensee is in bankruptcy. Mass Media Bureau Comments filed January 3, 1992 at p. 4.

3. Here, there are two potential impediments to application of the *Second Thursday* policy. First, petitioners acknowledge that NMC is not a party to the bankruptcy proceeding, which raises concerns about the circumstances surrounding the sale of NMC's LPTV permit. Second, Cantu is a business associate of Brumlik, which raises concerns that Cantu may continue his existing relationship with Brumlik and that Brumlik may be involved in the future operation of these facilities. In light of these concerns, the General Counsel asked the petitioners to comment on how approval of the assignment of NMC's permit for Low Power Television Station W12CD Altamonte Springs, FL, would comport with the *Second Thursday* policy, and to submit assurances from Cantu, prepared in accordance with 47 C.F.R. § 1.16, "that Brumlik will not be involved in the operation of the stations in the future." *NewSouth Broadcasting, Inc.*, 92I-068, released August 28, 1992, and FCC 92I-079, released September 28, 1992.³

4. In their comments, Brumlik and the NewSouth Companies provided assurance from the trustee in bankruptcy that the proceeds from the transfer of all of the authorizations will be paid into the bankruptcy court and that only the nominal amount of \$1 will be apportioned to the transfer of NMC's permit for LPTV Station W12CD Altamonte Springs, FL. As noted by the Bureau, Brumlik will not benefit from the transfer of the permit for W12CD. Bureau's Comments filed September 8, 1992 at p.2. Thus, even though NMC is not in bankruptcy the transfer of its permit for W12CD is in keeping with the spirit of the *Second Thursday* policy, and is not a bar to a grant of the Petition for Extraordinary Relief.⁴ Moreover, Cantu, who was not involved in Brumlik's misconduct, has given assurance that "Timothy S. Brumlik will have absolutely no involvement in the operation of such stations, either as an employee or in any other capacity, . . . [when Cantu acquires the stations] or at any time in the future." Comments, filed October 8, 1992 by Brumlik and the NewSouth Companies. That assurance is unchallenged.

5. In light of these comments, we are persuaded that the petitioners qualify for relief under *Second Thursday*. In particular, the record establishes that Brumlik's interest in the stations will be terminated, Brumlik will, based on Cantu's sworn statement, have no role in the future operation of the stations, the proceeds from the sales will be paid into the Bankruptcy Court and be distributed by the trustee for the benefit of innocent creditors, and Brumlik will, at most, receive only an incidental benefit from the elimination of his potential liability through the bankruptcy. Under these circumstances we will grant the Petition for Extraordinary Relief and the Request for Contingent Dismissal of Applications.

6. Finally, consistent with our delegation of authority to the Mass Media Bureau to process proposed distress sales, we will similarly delegate authority to the Bureau to process requests for relief pursuant to the *Second Thursday* policy. See *Minority Ownership In Broadcasting*, 92 FCC 2d 849, 858-59 (1982). The evolving nature of the *Second Thursday* policy has established a sufficient body of precedent to enable the staff to facilitate the processing of petitions and the resolution of hearing proceedings, while protecting the interests of innocent creditors. Therefore, authority is hereby delegated to the Bureau to process those petitions that are *consistent* with established Commission policy and *do not* involve novel questions of fact, law or policy concerning the *Second Thursday* policy.

¹ By an Order to Show Cause and Hearing Designation Order, 6 FCC Rcd 5047 (1991), this proceeding was instituted concerning WFXL(TV), four low power television permits, and an application for a new low power television station. Brumlik and the NewSouth Companies request termination of this proceeding and dismissal of all but one of the above-captioned applications, contingent on the grant of both assignment applications pending before the Mass Media Bureau for the low power authorizations which were filed concurrently with the Petition for Extraordinary Relief, and the assignment application for WFXL(TV) (BTCCT-900305LD) as amended by a Petition for Leave to Amend filed May 1, 1992.

² Those pleadings include: a Supplement to Petition for Extraordinary Relief, filed January 16, 1992 by Brumlik and the NewSouth Companies; Comments filed February 3, 1992 by the Mass Media Bureau; Supplements filed May 1 and 7, June 22,

July 17 and August 4 and 11, 1992 by Brumlik and the New South Companies; Comments filed May 18, July 20 and August 12, 1992 by the Bureau; and Comments filed June 1 and 22, 1992, and Supplemented on June 30, 1992 by James C. Orr, Bankruptcy Trustee.

³ Comments were filed September 8 and October 8, 1992 by Brumlik and the NewSouth Companies and September 8 and October 15, 1992 by the Mass Media Bureau. In its responses, the Bureau supports the request for *Second Thursday* relief.

⁴ As reflected in *La Rose v. FCC*, 494 F.2d 1145, 1146-47 n.2 (D.C. Cir. 1974), the *Second Thursday* policy is intended to accommodate the policies of the federal bankruptcy law with those of the Communications Act, and, thus, *Second Thursday* questions should be considered in light of the public interest in the protection of innocent creditors.

7. ACCORDINGLY IT IS ORDERED, That the Petition for Extraordinary Relief filed January 15, 1992, by Timothy S. Brumlik, NewSouth Broadcasting, Inc. and NewSouth Media Corporation IS GRANTED.

8. IT IS FURTHER ORDERED, That the Request for Contingent Dismissal of Applications filed January 15, 1992, by Timothy S. Brumlik, NewSouth Broadcasting, Inc. and NewSouth Media Corporation IS GRANTED; that the Application for Transfer of control of Station WFXL(TV) filed by NewSouth Broadcasting, Inc. (BTCCT-910308KE), the Applications concerning Low Power Station W07BZ filed by Timothy S. Brumlik (BLTVL-891107JE, BAPTVL-900105IA and BAPTVL-910607IB), the Applications concerning Low Power Station W12CD filed by NewSouth Media Corporation (BMPTVL-900129IA and BAPTVL-900105IC), the Applications concerning Low Power Station W13BO filed by NewSouth Broadcasting, Inc. (BMPTVL-900125IA, BMPTVL-891208R4, BLTVL-900125IB and BAPTVL-900703IE), the Applications concerning Low Power Station W12CC filed by Timothy S. Brumlik (BAPTVL-900105IB, BMPTVL-910301JG and BAPTVL-910607IC) and the Application for a New Low Power Station at Lumber City, Georgia filed by NewSouth Broadcasting, Inc. (BPTVL-870702TX) ARE DISMISSED; and that this proceeding IS TERMINATED provided that if the pending assignment applications filed by Timothy S. Brumlik, NewSouth Broadcasting, Inc. and NewSouth Media, Corporation are not consummated, the action taken herein shall be void and the proceeding will be returned to the status quo ante.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary